

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



PS/CD

FITZALBERT FULLER JR.,

Petitioner,

-v-

DEPARTMENT OF CORRECTIONS,

Respondent.

18-CV-6670CJS
ORDER

INTRODUCTION

Pro se Petitioner Fitzalbert Fuller Jr., an inmate currently confined at the Green Haven Correctional Facility, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket Item 1. The Petition was originally filed in the United States District Court for the Southern District of Florida and subsequently transferred to this Court. Docket Item 5. By Order dated October 17, 2018, Docket Item 8, the Court administratively closed Petitioner's case because he did not pay the \$5.00 filing fee nor did he submit a motion to proceed *in forma pauperis*.

That Order specifically informed Petitioner that he could move to re-open his action by either (1) paying the filing fee (\$5.00) or (2) submitting a motion to proceed *in forma pauperis* that includes a completed and signed prison certification section. The Court gave Petitioner 30 days to fix this error and submit a motion to proceed *in forma pauperis* along with the certification to the Court.

Petitioner responded to the Court's Order but failed to include a completed and signed certification. Docket Item 11. As a matter of discretion, the Court will provide Petitioner with one final opportunity to fix his error. Petitioner has until February 5, 2019

to either (1) pay the filing fee (\$5.00) or (2) submit a motion to proceed *in forma pauperis* that includes a completed and signed prison certification section. If Petitioner does not pay the filing fee or submit a signed certification by February 5, 2019, this case will be dismissed without prejudice. See *Leonard v. Lacy*, 88 F.3d 181, 187–88 (2d Cir. 1996).

CONCLUSION

For the reasons set forth above, the Court will grant Petitioner one final opportunity to fix the error in his *in forma pauperis* motion. Petitioner has until February 5, 2019 to either (1) pay the filing fee (\$5.00) or (2) submit a motion to proceed *in forma pauperis* that includes a completed and signed prison certification section. If Petitioner fails to comply with this deadline, this case will be dismissed, without prejudice, without further order of the Court. To assist the petitioner, the Clerk of Court is directed to send to Petitioner a blank *in forma pauperis* motion.

SO ORDERED.

DATED: JAN. 4, ²⁰¹⁹~~2018~~
Rochester, NY

Charles J. Siragusa
Charles J. Siragusa
United States District Judge